

EDGAR C. DUNLAP

IBLA 95-90

Decided June 26, 1997

Appeal from a Decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. MMC 50225 and MMC 50227.

Reversed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Nothing in the Appropriations Act or its implementing regulations precludes a claimant holding 10 or fewer claims from seeking a small miner exemption for some of the claims he holds and paying the annual rental fees for the others.

APPEARANCES: William L. McBride, Jr., Esq., Helena, Montana, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Edgar C. Dunlap has appealed the September 29, 1994, Decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Jacob A. Gavander (MMC 50225) and the Y. (Yellow) METAL [sic] (MMC 50227) lode mining claims abandoned and void for failure to pay rental fees in the amount of \$100 per claim for the 1993 and 1994 assessment years on or before August 31, 1993. Appellant also holds a placer mining claim, the Wildwood Placer (MMC 50226), that is approximately a mile distant from the contiguous lode mining claims. On August 18, 1993, BLM received \$200 for the 1993 and 1994 assessment years for the Wildwood claim, and on August 27, 1993, it received Appellant's small miner exemption for the two lode mining claims.

In its Decision, BLM correctly notes that mining claimants are required to either pay the rental fees or file a small miner exemption by August 31, 1993, by the Department of the Interior and Related Agencies Appropriations Act (the Appropriations Act), Pub. L. No. 102-381, 106 Stat. 1374 (1993). With respect to the small miner exemption, however, the Decision construes the Appropriations Act such that a claimant who is eligible for the small miner exemption is required to either pay the rental fee for all the claims or perform the assessment work on all the claims he holds, and concludes that he cannot pay fees on some of the 10 claims and perform assessment on others pursuant to the exemption. In support of this analysis, the Decision cites the preamble to the final regulations that govern

this issue, in particular 43 C.F.R. §§ 3833.1-6 and 3833.1-7, in which this construction was enunciated as a response to a comment on the proposed regulation. See 58 Fed. Reg. 38186, 38193 (July 15, 1993).

Appellant argues that BLM's construction of the Appropriations Act is incorrect and that this is demonstrated by several irreconcilable regulatory and practical inconsistencies. We need not discuss these alleged inconsistencies, however, because we have previously analyzed the nature and application of the small miner exemption and concluded that a mining claimant may elect to pay the annual rental fee for some on his claims and obtain a small miner exemption for others. In Richard W. Taylor, 136 IBLA 299 (1996), the issue was whether the Appropriations Act and implementing regulations requires that a claimant holding 10 or fewer claims shall have all of the claims under a notice or plan of operations, and whether a claimant can qualify for an exemption for those claims that are under a valid notice or plan of operations and pay rental fees for those that are not. Richard W. Taylor, supra, at 302.

We noted that the small miner exemption is limited to claimants who are producing or exploring under a valid notice or plan of operations. Appropriations Act, 106 Stat. 1374, 1378-79; 43 C.F.R. § 3833.1-6(a)(4) (1993). We concluded that these provisions did not require a claimant to have all the claims he holds under a notice or plan of operations to qualify for an exemption for those that are under a notice or plan of operations, and in reaching that conclusion, we reviewed other regulations that expressly contemplated that a claimant could hold exempt and nonexempt claims. Richard W. Taylor, supra, at 302.

We acknowledged that BLM's interpretation of the Appropriations Act as it relates to the small miner exemption and as stated in the regulatory preamble to the final rules was plausible, but observed that it had chosen not to articulate that interpretation as a regulation. Id.; see also James R. Ragsdale, 137 IBLA 243 (1996). As we said in James R. Ragsdale, a regulatory preamble does not per se have the force and effect of law, and that while "it may be used to interpret an ambiguous regulation, it cannot derogate the plain words of the regulations or enlarge their meaning." Id. at 246.

[1] We thus hold that nothing in the Appropriations Act or its implementing regulations precludes a claimant holding 10 or fewer claims from seeking a small miner exemption for some of the claims he holds and paying the annual rental fees for the others. As Appellant timely submitted the certification of exemption from payment of the 1993 and 1994 fees for the Jacob A. Gavander and Y. (Yellow) METAL claims, BLM improperly declared them abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed.

T. Britt Price
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge